

REMARKS

In this response, claims 21 and 30 have been amended. Claims 1-20 were previously canceled. Accordingly, claims 21-34 remain pending in the present application. Reconsideration of the above-identified patent application is hereby requested.

The Examiner has objected to the claim of priority because of the lack of the necessary reference to the prior application. In response to the Examiner's objections, Applicant has amended the Specification to clarify the claim of priority. Accordingly, Applicant requests the Examiner withdraw the objections to the claim of priority.

The Examiner has objected to the Abstract because of the form and legal phraseology used. In response to the Examiner's objections, Applicant has amended the Abstract to avoid the use of the phrases to which the Examiner is objecting. Accordingly, Applicant requests the Examiner withdraw the objections to the Abstract.

REJECTIONS UNDER 35 U.S.C. § 112

The Examiner has rejected claim 30 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. In light of the

Amendment Dated May 20, 2004
Reply to Office Action dated
February 20, 2004

-9-

Appl. No. 10/607,808
Atty. Docket No. 57210-5023

Examiner's objection to the claim, Applicant has amended claim 30 to change "members" to "member."

In view of the amendment made to the pending claim, it is believed that claim 30 now complies with 35 U.S.C. § 112, second paragraph. Thus, Applicant respectfully requests that the § 112, second paragraph, rejection be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 102(B)

The Examiner has rejected claims 21-23, 25, 27-29, and 31-34 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,082,125, issued to Ninni (herein Ninni). Reconsideration and withdrawal of this rejection is requested in view of the amendments and addition made to the claims and of the following discussion.

It is axiomatic that for a reference to be anticipatory, each and every feature in the claims must be disclosed by the single reference. Ninni does not anticipate the features present in the currently amended claims to allow the step of "securing said display rack to a substantially vertically oriented service using said securing portion, such that a length of said substantially horizontally oriented member is horizontally perpendicular to said substantially vertically oriented surface." (emphasis added)

The display shelf 30 of Ninni is secured to the vertical surface 40 such that the pair of cylindrical rods 36 are parallel to surface 40. Thus, the spacing between parallel rods

Amendment Dated May 20, 2004
Reply to Office Action dated
February 20, 2004

-10-

Appl. No. 10/607,808
Atty. Docket No. 57210-5023

36 dictate the dimensions of the merchandise that may be placed on the display shelf 30.

In contrast, Applicant's claimed method would secure the display rack to the substantially vertically oriented surface so that the length of the substantially horizontally oriented member is horizontally perpendicular to the vertical surface (Applicant's rack as mounted would not necessarily be vertically perpendicular, see FIG. 5). Thus, there are no constraints placed on the width of the items (e.g., photo albums) that are placed on the display rack.

Applicant notes that independent claim 21 contains the above described securing limitation and dependent claims 22-23, 25, 27-29, and 31-34, by virtue of depending on the independent claim, also contains the same limitation. Therefore these claims are also allowable for the same reasons as discussed above.

The Examiner has rejected claims 21, 22, 25, 27, 29, 31, 33, and 34 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,222,608, issued to Eklof (herein Eklof). Reconsideration and withdrawal of this rejection is requested in view of the amendments and addition made to the claims and of the following discussion.

It is axiomatic that for a reference to be anticipatory, each and every feature in the claims must be disclosed by the single reference. Eklof does not anticipate the features present in the currently amended claims to allow the

Amendment Dated May 20, 2004
Reply to Office Action dated
February 20, 2004

-11-

Appl. No. 10/607,808
Atty. Docket No. 57210-5023

step of "contacting an unbiased slidable carriage with said at least one product." (emphasis added)

Eklof teaches a push plate device 22 that is biased by a spring 34. In contrast, Applicant's carriage is unbiased as the carriage is moved manually to engage the items to be displayed. Once the item is engaged by the carriage, the weight of the item pushes against the carriage in an uneven manner . (e.g., the top of the item pushes against the top of the carriage, while the bottom of the carriage remains stationary) to prevent movement of the carriage and the item.

Applicant notes that independent claim 21 contains the above described unbiased carriage limitation and dependent claims 22, 25, 27, 29, 31, 33, and 34, by virtue of depending on this independent claim, also contain the same limitation. Therefore these claims are also allowable for the same reasons as discussed above.

In view of the foregoing discussion and the amendments made to the claims, Applicant submits that the § 102(b) rejections are overcome. Thus, Applicant respectfully requests that the § 102(b) rejections be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 103

The Examiner has rejected claim 26 under 35 U.S.C. § 103 as being unpatentable over Ninni.

Applicant notes that independent claim 21 contains the horizontally perpendicular limitation described by Applicant with

Amendment Dated May 20, 2004
Reply to Office Action dated
February 20, 2004

-12-

Appl. No. 10/607,808
Atty. Docket No. 57210-5023

regards to the 35 U.S.C. § 102 rejection. Dependent claim 26, by virtue of depending on the independent claim, also contains the same limitation. Thus, as Ninni does not disclose or suggest this limitation, Applicant submits that the subject matter recited in this claim would not be obvious to a person of ordinary skill in the art, and that this claim is allowable for the same reasons as discussed above.

The Examiner has rejected claim 30 under 35 U.S.C. § 103 as being unpatentable over Eklof, as applied to claims 21, 22, 25, 27, 29, 31, 33, and 34 above, and further in view of U.S. Patent No. 4,813,535, issued to Radocha (herein Radocha).

Applicant notes that independent claim 21 contains the horizontally perpendicular limitation described by Applicant with regards to the 35 U.S.C. § 102 rejection. Dependent claims 22, 25, 27, 29, 31, 33, and 34, by virtue of depending on these independent claims, also contain the same limitation. As neither Eklof or Radocha, alone or in combination, discloses or suggests this limitation, Applicant submits that the subject matter recited in these claims is non-obvious and allowable for the same reasons as discussed above.

In view of the foregoing discussion, Applicant submits that the § 103 rejections are overcome. Thus, Applicant respectfully requests that the § 103 rejections be withdrawn.

OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTIONS

Amendment Dated May 20, 2004
Reply to Office Action dated
February 20, 2004

-13-

Appl. No. 10/607,808
Atty. Docket No. 57210-5023

The Examiner has rejected claims 21, 22, and 24-26 as being unpatentable over claims 1, 2, and 4-6 (method) of U.S. Patent No. 6,612,448 (herein '448 Patent) under the judicially created doctrine of obviousness-type double patenting; claims 21, 31, 32, and 27 as being unpatentable over claim 10 of the '448 Patent; claim 21 as being unpatentable over claim 16 of the '448 Patent; claims 21, 32, and 27 as being unpatentable over claim 11 of the '448 Patent; claims 21, 23, and 33 as being unpatentable over claim 15 of the '448 Patent; and claims 21, 28, and 29 as being unpatentable over claim 17 of the '448 Patent.

Applicant submits that the amendments made to claim 21, which also affect the claims depended therefrom, overcomes the obviousness-type double patenting rejections as it would not be obvious for the horizontally perpendicular limitation of amended claim 21 to be found in the claims of the '448 Patent.

In view of the foregoing discussion and of the amendments made to the claims, Applicant submits that the obviousness-type double patenting rejections are overcome. Thus, Applicant respectfully requests that these rejections be withdrawn.

Amendment Dated May 20, 2004
Reply to Office Action dated
February 20, 2004

-14-

Appl. No. 10/607,808
Atty. Docket No. 57210-5023

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

Respectfully submitted,

JEFFER, MANGELS, BUTLER & MARMARO LLP

Dated: 5/20/2004

By: 

George G.C. Tseng, Esq.
Reg. No. 41,355
1900 Avenue of the Stars
Seventh Floor
Los Angeles, CA 90067-4308
(310) 203-8080

Amendment Dated May 20, 2004
Reply to Office Action dated
February 20, 2004

-15-

Appl. No. 10/607,808
Atty. Docket No. 57210-5023

3204894v1